

**BOROUGH OF BEACH HAVEN
COUNTY OF OCEAN**

ORDINANCE #2022-27C

**AN ORDINANCE ESTABLISHING CHAPTER 194 OF THE
BOROUGH CODE OF THE BOROUGH OF BEACH HAVEN
CONCERNING THE SALE OF PRODUCTS SUCH AS KRATOM AND
DELTA 8 AND RELATED PARAPHERNALIA**

WHEREAS, the Borough of Beach Haven (the “Borough”) wishes to establish Chapter 194, to be entitled “Sale of Unregulated Substances,” concerning, among other things, the sale of mitragynine and 7-hydroxymitragynine, also known as Kratom, and Delta 8 THC products within the Borough; and

WHEREAS, the Borough hereby finds that mitragynine and 7-hydroxymitragynine, also known as Kratom, and Delta 8 THC, have the potential for abuse and can pose a threat to the health, welfare, and safety of the community and its residents; and

WHEREAS, the use and/or sale of Kratom has been banned in six states based upon information which has indicated its use is a health and safety risk; and

WHEREAS, on September 11, 2019, the U.S. Food and Drug Administration (FDA) issued a warning about Kratom because of its morphine like properties which could, if misused, expose users to risks of addiction, abuse, and dependence; and

WHEREAS, the use and/or sale of Delta 8 THC products have been either restricted or banned in eighteen (18) states; and

WHEREAS, the FDA and the Centers for Disease Control and Prevention issued drug warnings to the public regarding potential health risks of using Delta-8 THC products on September 14, 2021; and

WHEREAS, the FDA issued its warning because: (1) Delta-8 THC products have not been evaluated or approved by the FDA for safe use and may be marketed in ways that put the public at risk; (2) the FDA has received adverse event reports involving Delta-8 THC products; (3) Delta 8 THC has psychoactive and intoxicating effects; (4) Delta-8 THC products often involve use of potentially harmful chemicals to create the concentrations of Delta-8 THC claimed in the marketplace; and (5) Delta-8 THC products should be kept out of reach of children and pets; and

WHEREAS, the Borough hereby finds that the manufacturers of Delta-8 THC and Kratom products are packaging and labeling these products in ways that appeal to children, such as gummies, chocolates, cookies, candies; and

WHEREAS, neither the federal government nor the State of New Jersey have established rules or regulations governing the production of Kratom or Delta-8 THC nor its use by or sale to minors; and

WHEREAS, it has been determined that it is in the best interests of the health, welfare, and safety of the Borough to address the sale of unregulated substances such as Kratom and Delta-8 THC at locations within the Borough in close proximity to schools, playgrounds, daycare facilities, and family tourism locations.

NOW, THEREFORE, BE IT ORDAINED, by the governing body of the Borough as follows:

SECTION ONE. The Borough Code is hereby amended by creating a new Chapter 194, Sale of Unregulated Substances, that shall read as follows:

Chapter 194. Sale of Unregulated Substances.

§194-1. Purposes.

This Chapter is enacted to protect, preserve, and promote the health, safety, and welfare of the citizens of and visitors to the Borough by prohibiting the sale, distribution, or delivery of any substance containing Kratom or Delta-8 THC within close proximity to schools, playgrounds, parks, daycares and certain tourist locations frequented by children and families.

§194-2. Definitions.

When used in this Chapter the following words have the meanings as provided below:

DEALER: a person that sells, prepares, maintains, or otherwise distributes Kratom or Delta-8 THC products or that advertises, represents, or holds itself out as selling, preparing, maintaining, or otherwise distributing Kratom or Delta-8 THC products from a physical location within the Borough.

DISTRIBUTE: the actual, constructive, or attempted transfer from one person to another of a substance, whether or not there is an agency relationship, and includes a sale.

PERSON: any individual, corporation, firm, partnership, joint venture, association, agency, or other group acting as a unit, or combination thereof, including, but not limited to, a store, restaurant, hotel, bakery, delicatessen, grocery store, convenience store, bar, gas station, or food or drink company.

DELTA-8 THC (Delta-8 tetrahydrocannabinol): an extract or stimulant that is produced from a naturally occurring cannabinoid found in small traces in hemp and cannabis (marijuana) plants, and includes, but is not limited to, any food product, dietary supplement, or smoke or vape product containing such an extract or stimulant. Concentrated amounts of Delta-8 THC are typically manufactured from hemp-derived cannabidiol (CBD).

KRATOM: an extract or stimulant that is produced from the leaves of an evergreen tree (*Mitragyna speciosa*) native to Southeast Asia, which contains mitragynine and/or 7-hydroxymitragynine, including, but not limited to, any food product or dietary supplement containing such an extract or stimulant.

PARAPHERNALIA: Any equipment, product or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing a controlled or foreign substance into the human body, including, but not limited to kratom, delta-8 THC, or cannabis. This section shall not be interpreted to include alcoholic beverages regulated by Title 33 of New Jersey Statutes.

§194-3. General Prohibitions.

- A. It shall be unlawful for any Dealer to offer, sell, distribute, or expose for sale any Kratom product or Delta-8 THC product or paraphernalia within 1,000 feet of any school, playground, park, or daycare facility within the Borough. This separation distance shall be measured from the property line of the Dealer location to the property line of the school, playground or daycare.
- B. It shall be unlawful to offer, sell, give, deliver, distribute, or otherwise provide a Kratom product or Delta-8 THC product or paraphernalia to any person under the age of twenty-one (21) years.
- C. It shall be unlawful to offer, sell, give, deliver, distribute, or otherwise provide a Kratom product or Delta-8 THC product or paraphernalia on outside vendors or carts. Kratom and Delta-8 THC products may only be sold inside storefronts.

§194-4. Insurance Requirements.

Any dealer who sells, distributes, or delivers any substance containing Kratom or Delta-8 THC shall provide a certificate of Commercial General Liability – Occurrence Form with the following limits to the licensing clerk annually:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$1,000,000 Products/Completed Operations
\$1,000,000 Personal/Advertising Injury
\$2,000,000 Products/Completed Operations Aggregate

§194-5. Violations and Penalties.

Any person who shall violate any of the provisions of this Chapter shall be subject to the general penalty provisions contained in § 1-16(A) through (D).

§194-6. Equitable Relief.

In addition to other remedies, the Borough may institute litigation, in equity or at law, to restrain, prevent, or abate a violation of this Chapter. Such proceedings may be initiated before any court of competent jurisdiction. The expense of such proceedings may be recoverable from the violator in any manner as may now or hereafter be provided by law.

ARTICLE TWO. This Ordinance shall hereby become effective upon final passage and publication as provided by law.

ARTICLE THREE. REPEALER. All Ordinances or parts of Ordinances inconsistent herewith are repealed to the extent of such inconsistency. The Borough Clerk is authorized to renumber and/or re-codify any sections affected by such repeal to the extent consistent with this Ordinance.

ARTICLE FOUR. SEVERABILITY. If any word, phrase, clause, section or provision of this Ordinance shall be found by any Court of competent jurisdiction to be unenforceable, illegal, or unconstitutional such word, phrase, clause, section, or provision shall be severable from the balance of the Ordinance and the remainder of the Ordinance shall remain in full force and effect.

ARTICLE FIVE. EFFECTIVE DATE. This Ordinance shall take effect upon publication thereof after final passage according to law.

NOTICE

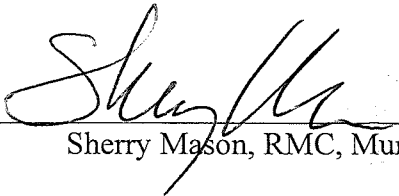
Public Notice is hereby given that the foregoing Ordinance was introduced and passed on the first reading at a public meeting of the Borough Council of the Borough of Beach Haven, County of Ocean, State of New Jersey, held on October 27, 2022 at 4:00 p.m. A copy of the ordinance can be obtained, without cost, by any member of the general public at the Office of the Municipal Clerk, 300 Engleside Avenue, Beach Haven, New Jersey 08008 Monday through Friday, 9:00 a.m. to 4:00 p.m.

Further public notice is hereby given that said ordinance shall be considered for final passage and adoption at a public meeting of the Borough Council to be held on November 30, 2022 at 4:00 p.m. at the Beach Haven Municipal Building, 300 Engleside Avenue, Beach Haven, New Jersey 08008.

CERTIFICATION

I, Sherry Mason, RMC, Municipal Clerk of the Borough of Beach Haven, do hereby certify that the foregoing Ordinance was duly adopted on first reading by the Municipal Council of the Borough of Beach Haven at a regular meeting held on the 27th day of October 2022, a quorum being present and voting in the majority.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 27th day of October 2022.



Sherry Mason, RMC, Municipal Clerk

<i>First Reading:</i>	<i>October 27, 2022</i>
<i>Publication:</i>	<i>November 3, 2022</i>
<i>Passage:</i>	<i>November 30, 2022</i>
<i>Final Publication:</i>	<i>December 8, 2022</i>
<i>Effective:</i>	<i>December 20, 2022</i>